

VZCZCXRO1216
RR RUEHMA RUEHPA
DE RUEHBP #0112/01 0551656
ZNR UUUUU ZZH
R 241656Z FEB 09
FM AMEMBASSY BAMAKO
TO RUEHC/SECSTATE WASHDC 0060
INFO RUEHZK/ECOWAS COLLECTIVE

UNCLAS SECTION 01 OF 02 BAMAKO 000112

SENSITIVE
SIPDIS

DEPT FOR G/TIP VERONICA ZEITLIN

E.O. 12958: N/A
TAGS: [PHUM](#) [KCRM](#) [KJUS](#) [KTIP](#) [PGOV](#) [ML](#)
SUBJECT: JUDICIAL AUTHORITIES IN KITA DISCUSS 2008 CHILD
TRAFFICKING CASE

REF: A. 08 BAMAKO 00312
[B](#). 08 BAMAKO 00707
[C](#). BAMAKO 00077

1.(SBU) Summary: In a meeting with the Embassy on February 11, the public prosecutor and trial court judges from the western town of Kita discussed the March 2008 arrest and ongoing prosecution of three child traffickers. Our discussion underscored the level of confusion surrounding this case as the prosecutor and judges originally maintained that the three traffickers had been transferred to the prison in Kayes, when in fact a local judge granted the traffickers pre-trial release just a few months after their arrest in [2008](#). The prosecutor later amended his response to confirm that, in fact, the three suspects remain on provisional bail, their specific whereabouts likely unknown. Discussing other matters of concern, the jurists described the dangers of the broad powers accorded rural Malian Justices of the Peace, the evident lack of attorneys outside of Bamako, and the need to build adequate prisons in rural locales. End Summary.

Child Trafficking Case Confusion

2.(SBU) On February 11 the public prosecutor for the Circle of the western town of Kita and four of Kita's five sitting judges on the local trial court met with the Embassy to discuss the 2008 case of three individuals suspected of child trafficking. The three suspects, with 26 children in their control, were arrested by authorities in Kita in March 2008 (Ref. A). All but two of these children were trafficked from neighboring Guinea and were repatriated through assistance from the Malian government and local NGOs. A few months later, however, a Malian judge in Kita released the three trafficking suspects from custody pending trial (Ref. B). Nearly one year after their arrest, no trial date has been set and the three suspects remain at large.

3.(SBU) Kita's new public prosecutor, Hussein Cisse, initially told the Embassy on February 11 that the same group of three traffickers had not been released but rather transferred to a prison in the regional capital of Kayes to await judgment and sentencing. When pressed by the Embassy for further details, however, Mr. Cisse conferred with his deputy and then corrected this statement, agreeing that, in fact, the suspects been released pending trial in 2008. Mr. Cisse's assistant added that the investigating judge at the time decided that no crime had been committed but that Mr. Cisse's predecessor, Mahamoud Mauloud Najim, disagreed with this decision and reintroduced the charges, on behalf of the Malian government, with the Court of Appeals in Kayes. When asked about the current whereabouts of the three trafficking suspects, Mr. Cisse and his deputy confirmed that the individuals were no longer in Kita. They said the suspects were believed to be located in a neighborhood on the outskirts of Bamako but could provide no further details.

Judge and Jury: Rural Justices of the Peace

4.(SBU) Four of Kita's five sitting judges explained to the Embassy what they described as the dangers of rural Justices of the Peace - an innovation which enables one individual to serve as prosecutor, judge, and jury. Mali relies on Justices of the Peace in underserved rural areas as a substitute for trial courts. The Kita judges complained that Justices of the Peace wield too much power and said Mali needed to urgently revisit this system. The judges noted that the inadequacies of the Justice of the Peace system was well known to Malian Ministry of Justice and legal professionals and said Mali was hoping to establish enough trial courts to serve all of Mali's communes, thereby paving the way for the eventual elimination of the Justice of the Peace system. With 703 local communes, however, Mali's trial court project is likely an extremely long-term endeavor.

Shortage of Lawyers

5.(SBU) Kita's judges and prosecutor also raised access to the justice system in rural areas as a serious human rights concern. Most rural Malians, they noted, have limited and inadequate access to legal recourse due, in large part, of a dearth of lawyers in rural areas and the inability of local Malians to afford the few lawyers that are available (Ref. C). The judges and prosecutor in Kita observed that there is

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not a single lawyers office in Kita, which is one of the largest towns in western Mali. According to a 1998 census, an estimated 280,000 people live within the Administrative Circle of Kita. Only residents with sufficient means to hire an attorney from Bamako are represented by an attorney in court in Kita. The jurists admitted that the majority of litigants in their court represent themselves. This is significant, the jurists explained, because Malian judges are generally not allowed to apply relevant law - such as international treaties - to a case unless the litigant advances the argument.

6.(SBU) One of the Kita judges suggested that the Malian government could easily solve the lack of rural access to lawyers if it so desired. First, the government could provide a financial incentive to lawyers willing to work in rural areas. Or, as an alternative the government could require that all new attorneys graduating from faculties of law work in rural areas for a certain period of time as a prerequisite for entering the profession of law.

7.(SBU) The jurists also explained the role of customary (traditional) law in the Malian judicial system. Essentially, the written law always trumps a conflicting rule of customary law, but written law frequently makes reference to customary law and directs that the resolution of certain types of conflicts be resolved by the rules of customary law in the region in question. This is particularly true for disputes over land ownership and inheritance. Furthermore, customary law can be used to fill gaps in the written law - to provide a means of decision for a judge who would otherwise be called upon to fill the gap with his personal preference. Customary law is, therefore, considered a legitimate source of law in Mali, alongside the written law.

Prison Conditions Inadequate

8.(SBU) The Kita jurists expressed concern that the prison facilities in Kita were inadequate. Specifically, although women and children are housed in cells separate from the men,

Kita does not have a separate prison for women and children, as does Bamako. The jurists stated that this is a concern "for anyone who cares about human rights" and obliquely suggested that a western power might have the means to finance the construction of a new facility, since Mali itself lacks the resources. One of the Kita judges suggested that an exchange or training program for Malian lawyers and judges would be beneficial, allowing the Malian judge to learn the mechanics of another system of justice, and to take away from that experience "a synthesis" of the best of both worlds.

Comment: Easier Said than Done

9.(SBU) The three child traffickers arrested in March 2008 remain at large and it is unclear when, if ever, they will be called to account. A plan to eventually retire the Justice of the Peace system is a positive move, although Mali's chronic shortage of funds makes it unlikely that this system will be scrapped anytime soon. Nevertheless, it is reassuring that Malian jurists and authorities recognize the threat posed by investing the powers of indictment, prosecution, and judgment in one single individual. The same likely holds for the shortage of lawyers in rural areas and improvement of rural detention centers - recognizing the problem is one thing, but finding the resources and political will to address the issue is something entirely different.
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